

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.24254 of 2006

-
Date: 05th January 2007
-

Between:

Pulumu Arjuna Rao,
S/o P.Subba Rao,
aged 41 years,
Someswaram village,
Rayavaram Mandal,
East Godavari District.

... Petitioner.

And

1. Government of Andhra Pradesh
rep. By its Secretary,
Panchayat Raj Department,
Secretariat, Hyderabad and 4 others.

... Respondents.

* * *

ORDER:

-

Heard the counsel.

2. The writ petition is filed for a writ of Mandamus declaring action of the 4th respondent in issuing the impugned proceedings Roc.No.2016/06/A12, dated 15.11.2006 as per the decision of the 3rd respondent dated 13.11.2006, as illegal, arbitrary and violative of principles of natural justice; and consequently set aside the same and pass such other suitable orders.

3. The impugned proceedings read as hereunder:

**Proceedings of the District Panchayat Officer (FAC)
& Member, Convenor Dist. Level Committee (Sand
Auctions) East Godavari, Kakinada
Present:: Sri J.V.S.S.Sarma, M.Sc.,**

Roc.No.2016/06/A12

Dt.5.11.2006

Sub: Sand matters- Change of ramp point- Sand package

No.4 i.e., Kapileswarapuram/Korumilli-auction held on

23.10.06-bid confirmed in favour of Sri Pulumu Arjuna Rao, s/o Subba Rao, Someswaram, Rayavaram (M)- being the highest bidder for an amount of Rs.68,66,657/- bidder requested for change of ramp point i.e., at Kapileswarapuram from existing 28/2-4 Km. to 25/0-2 decision of the Dist. Level Committee (Sand Auctions) held on 4.11.06 considering the repn. of the bidder for change of ramp point-orders –issued earlier- cancelled- Orders- Issued.

Ref: 1. Lr.No.AB/A5/No.1719 M dt. 28.10.06 of the Executive Engineer, GH, Dowlaiswaram.

2. Reprn. Dt.28.10.06 of Sri Datla Satyanarayana Raju, bidder, sand package No.3 i.e., Ravulapalem Ubalanka/Merlapalem Komaraju- lanka for the current auctioning year 2006-07.

3. Reprn. Dt. 28.10.06 of Sri T.Naga Mohan Reddy, M.P.T.C., Jonnada, Alamuru Mandal.

4. N.Dis.No.X/2006 dt.29.10.06 of this office addressed to the Divisional Panchayat Officer, Amalapuram.

5. Roc.No.1558/2004/A dt. 2.11.06 of the Divisional Panchayat Officer, Amalapuram.

6. This officer Procs. ROC No.2016/2006/A12
dt.6.11.2006.

<<< 0 >>>

ORDER:

In the proceedings 6th read above, as per the decision held by the District Level Committee (Sand Auctions) dt.4.11.2006 orders were issued permitting Sri Pulumu Arjuna Rao, s/o Subba Rao, Someswaram, Rayavaram Mandal bidder for sand package No.4 Kapileswarapuram/Korumilli for the auctioning year 2006-07 to change the ramp point from Km. 28/2 to Km. 28/4 to Km.25/0-6 as he represented that the ramp point which was notified is not feasible to excavate and transport the same,

During the auctions held on 13.11.2006 for the left over sand packages/reaches situated in East Godavari certain bidders participated in the said auction in respect of sand package No.2 i.e., Jonnada/Alamuru have raised objection regarding change of ramp point in respect of Sand Package No.4 i.e., Kapileswarapuram/Korumilli and requested to cancel the same as it reflects their business.

The matter has been placed before the District level Committee (Sand Auctions), East Godavari held on 13.11.2006 and the committee has decided to cancel the orders issued in the reference 6th read above.

In view of the above, the orders earlier permitting the bidder Sri Pulumu Arjuna Rao, s/o Subba Rao, Someswaram, bidder for sand package No.4 i.e., Kapileswarapuram/ Korumilli to change the existing ramp point from Km 28/2 to Km. 28/4 to Km. 25/0-6 are hereby cancelled. The bidder should excavate and transport the sand from the notified ramp point i.e., 28/2 to 28/4 only.

**(ISSUED AS PER THE DECISION OF THE DIST. LEVEL
COMMITTEE (SAND AUCTIONS) HELD ON
13.11.2006)**

Sd/- xxx
District Panchayat Officer &
Member Convenor
Dist. Level Committee (Sand Auctions)
East Godavari, Kakinada.

To

Sri Pulumu Arjuna Rao, s/o Subba Rao, Someswaram,
Rayavaram (M)

Copy to the Panchayat Secretaries of
Kapileswarapuram/Korumilli

Copy to the MRO/MPDO, Kapileswarapuram.

Copy to the Executive Engineer, Godavari Head Works Divn.,
Dowlaiswaram

Copy to the Asst. Director of Mines & Geology, Rajahmundry.

Copy submitted to the Joint Collector, East Godavari, Kakinada.

Copy submitted to the Chief Executive Officer, Zilla Parishad,
Kakinada.

4. Respondent No.5 was impleaded as per the orders of this
Court dated 28.12.2006 in W.P.M.P.No.31491 of 2006.

5. It is stated in the writ petition that the second respondent
issued notification dated 05.10.2006 to auction the rights of sand
quarrying in River Godavari for package No.4, Kapileswarapuram-
Korumilli Reach and the petitioner submitted his bid and he
became successful bidder in the auction held on 23.10.2006
having offered highest amount of Rs.68,66,657/- for quarrying and
transporting the sand in the said Reach for the year 2006-07. The
petitioner paid a sum of Rs.17,16,664/- towards 25% of the
knocked down amount in addition to 2% security deposit and the

District Level Committee confirmed the bid in his favour. The second respondent vide proceedings Roc.No.2016/2006/A12 (P-4), dated 24.10.2006 communicated the confirmation of the bid in his favour. As per the said confirmation, the lease will be valid up to 30.9.2007. It is also stated that pursuant to the confirmation of lease in his favour, the petitioner was asked to transport the sand quarried by forming ramp at Km. 28/2-4. As the location at Km.28/2-4 is full of water and there is no possibility or feasibility of forming a ramp at that point, the petitioner made a representation to the third respondent to permit him to form a ramp at any other convenient place within his Reach i.e., Package No.4, Kapileswarapuram-Korumilli Reach. The Deputy Executive Engineer, Gowthami Sub-Division, after causing an inspection submitted a report to the Executive Engineer, Godavari Head Works Division, Dowlaiswaram and the Executive Engineer in turn submitted a report to the District Level Committee recommending for change of ramp point as the existing ramp point is full of water and there is no feasibility to lift the sand. It is also stated that after considering the issue, the third respondent vide proceedings in Roc.No.2016/06/A12, dated 06.11.2006 permitted the petitioner to change the ramp point from 28/2-4 to 25/0-6. It is also stated that the objections raised by other lessees were also taken into consideration while permitting for changing the ramp point. It is further stated that the petitioner formed a ramp at 25/0-6 in his reach Package No.4 (Kapileswarapuram-Korumilli) and carrying on sand quarrying operations and transporting the sand through the ramp at Km. 25/0-6. While things stood thus, on 13.11.2006 the

petitioner came to know that the third respondent cancelled the earlier permission dated 06.11.2006 for change of ramp point and 4th respondent issued proceedings on 17.11.2006 and the copy of the cancellation proceedings had not been served on the petitioner. It is learnt that a copy of the said proceedings had been sent to sarpanch of Kapileswarapuram Gram Panchayat with instructions to stop the quarrying operations. The petitioner could secure a copy from the sarpanch of Kapileswarapuram village. It is also stated that the cancellation proceedings dated 13.11.2006 as communicated in Roc.No.2016/06/A12, dated 15.11.2006, is illegal, arbitrary, unjust and violation of principles of natural justice. No notice whatsoever was issued to the petitioner before passing the impugned cancellation order. After confirming the lease in favour of the petitioner vide proceedings dated 24.10.2006 in view of heavy stagnation of water at the ramp point and as there is no possibility and feasibility for forming a ramp for transporting the sand, the petitioner made a representation to the respondents to permit him to change the ramp point. The Deputy Executive Engineer, Gowthami, Sub-Division after causing enquiry submitted a report and on the basis of which the Executive Engineer recommended for changing the ramp point. The Divisional Panchayat Officer had also physically verified and found that ramp at Km. 28/2-4 was not feasible. After taking into consideration all the aspects, the third respondent issued proceedings dated 06.11.2006 to change the ramp. No opportunity was afforded before issuing impugned cancellation proceedings dated 15.11.2006. The said proceedings are in utter violation of

principles of natural justice and is liable to be set aside. Several other points also had been narrated in paragraphs 6 and 7 of the affidavit filed in support of the writ petition.

6. Respondent No.4 filed counter-affidavit wherein it was stated that a notification was issued for conduct of sand auctions for 13 sand packages and 14 sand reaches located in River Godavari and for Kamarajupeta Burada Kaluva (which was not covered under Godavari Reaches) situated in East Godavari District for the auctioning year 2006-07 vide notification Roc.No.2016/2006/A12, dated 05.10.2006, including sand package No.4 i.e., Kapileswarapuram/Korumilli duly fixing Rs.48,75,999/- as upset price for the said package. The nomenclature of the said package is detailed hereunder as notified in the said notification.

Gowtami Left Bank:

From 28/200 Km. to 28/400 Km. Ramp at 28.300 Km.
Kapileswarapuram.

From 32/600 to 32/800 Km. Ramp at 32.700 Km.
Korumilli.

During the auctions held on 23.10.2006, as per the notification issued dated 05.10.2006 the petitioner stood as highest bidder as he offered an amount of Rs.68,66,657/- for the said package and after making required payments by the bidder such as 25% of the knocked down amount, lease agreement charges, 2% security deposit and income tax as applicable, confirmation cum work order was issued in favour of the highest bidder vide

Procgs.Roc.No.2016/2006/A12-P4, dated 24.10.2006 stipulating certain terms and conditions. One of the condition therein is that the bidder should excavate and transport the sand from the notified ramp points only i.e., from 28.300 Km. at Kapileswarapuram and 32.700 at Korumilli.

7. It is also stated in paragraph 3 of the counter-affidavit that the Executive Engineer, Godavari Head Works, Dowlaiswaram had submitted a report vide his Lr.No.AB/A5/No.1719M, dated 28.10.2006, stating that Sri Pulumu Arjuna Rao, son of Subba Rao, Someswaram, in whose favour the sand package No.4 i.e., Kiapileswarapuram/Korumilli was confirmed for the year 2006-07, had represented that in the existing ramp point located at Kapileswarapuram i.e., 28/1-4 to 25/0-2 situated at Gowthami Left Bank. It is further stated that as per the report furnished by the Deputy Executive Engineer, Gowthami Sub-Division, the existing ramp point is currently having full of water and there is no feasibility to lift and transport the sand from the existing location and there is no objection to form new ramp at point No.25/0-2 mileage. Accordingly, the Executive Engineer, GH Dowlaiswaram had furnished his report for change of ramp point in regard to sand package No.4 i.e., Kapileswarapuram-Korumilli since the existing ramp point is full of water and there is no feasibility to lift the sand. It is further stated that Sri Datla Satyanarayana Raju, Ravulapalem, who became the highest bidder for sand package No.3 i.e., Ravulapalem/Ubalanka/Merlapalem/Komarajulanka for the auctioning year 2006-07 had put a complaint before the authorities stating that he got the leasehold rights of sand package

No.3 i.e., Ravulapalem/Ubalanka/Merlapalem/Komarajulanka, dated 24.10.2006, that tenders have been invited for sand package No.2 i.e., Jonnada/Alamuru and they planned to file tender for the said package No.2, that they came to know that the sand bidder for package No.4 i.e., Kapileswarapuram/Korumilli was trying to form ramp which is nearer i.e., 3 Kms. to Jonnada/Alamuru ramp and requested to sort out the problem, otherwise they will sustain huge loss and it causes loss to the bidders of sand package No.2 i.e., Jonnada/Alamuru also. It is also stated that

Sri T. Naga Mohan Reddy, M.P.T.C, Jonnada had also filed a petition stating that for sand package No.4 i.e., Kapileswarapuram/Korumilli, the ramp point was notified as 28/2-4, but instead of that the bidder was forming ramp at 25/0, and because of this no one would participate for sand package No.2 i.e., Jonnada/Alamuru and thereby heavy loss would sustain to the Jonnada/Alamuru ramp and their panchayat would loose income on sand seignorage and therefore requested to stop the new ramp proposed by the bidder for sand package No.4 i.e., Kapileswarapuram/Korumilli. Thereupon, the Divisional Panchayat Officer, Amalapuram was requested to furnish his report in the above matter. The Divisional Panchayat Officer, Amalapuram had submitted his report stating that he visited physically the sand package No.4 i.e., Kapileswarapuram/Korumilli and found that the ramp point situated from 28/2 to 28/4 at Kapileswarapuram as notified in the notification is not feasible to form ramp and the Reach mileage situated from 20/0 to 29/0 (9 Kms.), the feasibility to form ramp is at 25/6 to 26/0 only and in no other place, there is

no feasibility to form ramp and to quarry and transport sand. It is further stated that it is not true that the distance between the Jonnada/Alamuru and new ramp is within 3 Kms. It is about 5 Kms. distance from the new ramp proposed at Kapileswarapuram to Jonnada ramp and so the formation of ramp at Kapileswarapuram is feasible only at 25/6 to 26/0 Km. Basing on the same, the issue was put before the District Level Committee (Sand Auctions), East Godavari which met on 4.11.2006 and as per the decision held by the District Level Committee, orders were issued to the effect permitting the bidder, sand package No.4 i.e., Kapileswarapuram/Korumilli for change of ramp and formation of new ramp at Km. 25/6 to 26/0 vide proceedings Roc.No.2016/2006/A12, dated 06.11.2006.

8. It is also further stated in paragraph No.4 of the counter-affidavit that for the left over sand package/reaches which were not confirmed in the auction held on 23.10.2006 for want of considerable amounts, auctions were conducted on 13.11.2006. During the said auctions, the participants for the sand package No.2 i.e., Jonnada/Alamuru have again objected for change of ramp point in respect of sand package No.4 i.e., Kapileswarapuram/Korumilli as it was badly effected on their business and requested the Chairman, District Level Committee (Sand Auctions) and other committee members to cancel the orders issued earlier. Thereupon, the Chairman, District Level Committee (Sand Auctions) had instructed to put the matter before the District Level Committee (Sand Auctions). Accordingly, the matter had been discussed in detail in the District Level

Committee (Sand Auctions) held on 13.11.2006 and decided to cancel the orders issued earlier dated 06.11.2006 and cancelled the same through the impugned order. The District Level Committee (Sand Auctions) is competent to decide any problem/matter under Rule 9B of Rules issued in G.O.Ms.No.1, I & C Dept. dated 01.01.2001.

9. It is also further stated that the District Level Committee (Sand Auctions) in its meeting held on 13.11.2006 had taken a decision to cancel the orders dated 06.11.2006 because of the change of ramp in package No.4 causing inconvenience to the lessees of package Nos.2 and 3. So, the District Level Committee passed resolution No.8, dated 13.11.2006 cancelling the orders issued on 06.11.2006 as it causes inconvenience to other lessees.

10. In the counter-affidavit filed by the respondent No.5, who was impleaded as a party, several factual details are narrated. Rule 9(N) of the Rules had been referred to and it is stated that in the light of serious objections raised by the 5th respondent and certain others, the said order was made.

11. The main grievance of the writ petitioner is that before making the impugned order, no opportunity had been given and the same is in violation of principles of natural justice. No doubt, incidentally it had been pointed out that several other reasons had been recorded. Whatever the reasons that had been recorded inasmuch as the impugned proceedings were made without putting the writ petitioner on notice and without affording opportunity, the

same is liable to be set aside and accordingly they are hereby set aside. It is made clear that the third respondent to put the petitioner on notice and also give reasonable opportunity to him to explain his stand by raising appropriate objections. It is also made clear that the third respondent to furnish the complaint copies or any other objections filed in this regard to the petitioner so as to enable the petitioner to raise appropriate objections. It is needless to say that the 5th respondent also may file any additional objections if the 5th respondent is advised to do so. After putting the writ petitioner and also 5th respondent on notice and after receiving all the objections which may be filed in this regard, the third respondent to dispose of the matter in accordance with law after taking into consideration all such objections which may be raised in this regard.

12. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs. It is needless to say that till a decision is taken in this regard *status quo* as on today to be maintained.

(P.S.NARAYANA, J.)

Date: January 5, 2007.
BSB